

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
APRIL 14, 2021**

**CALL TO ORDER  
6:00 PM**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. in the 2nd Floor Conference Room of the South Campus Building, 4011th Street West, Suite 200 Kalispell, Montana. Board members present were Sandra Nogal, Greg Stevens, Jeff Larsen, Verdell Jackson, and Buck Breckenridge. Elliot Adams, Mike Horn, Kevin Lake, and Ron Schlegel had excused absences. Erin Appert, Laura Mooney, Donna Valade, Erik Mack, and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were approximately 36 members of the public in attendance plus an unknown number of people who joined via Zoom.

**APPROVAL OF  
MEETING  
MINUTES  
6:00 PM**

Breckenridge made a motion, seconded by Nogal, to approve the March 10, 2021 meeting minutes.

Nogal pointed out a typo on the last page regarding Whistlestop Retreat. The amendment was noted.

Motion passed unanimously to accept minutes, as amended, on a roll call vote.

**PUBLIC  
COMMENT  
(Public matters that  
are within the  
jurisdiction of the  
Board 2-3-103  
M.C.A)  
6:03 PM**

None

**DISCLOSURE OF  
ANY CONFLICT  
OF INTERESTS  
6:03 PM**

Breckenridge disclosed he would have to recuse himself from FZC-21-03 and FZC-21-04 as he worked for the firm that represented the applicants in each file.

**BOARD  
DISCUSSION  
6:03 PM**

Larsen disclosed, at the request of Ron Schlegel, that Schlegel would most likely have to step down from the board because of circumstances unseen. It was not something Schlegel wanted to do but might be necessary in the future.

Mussman addressed the board and noted there were 5 board members present but because of the conflict of interest, in which Breckenridge needed to recuse himself, there would not be a quorum for those files. Mussman suggested they

still have public hearing, to honor the people who had shown up for it, then close the public hearing when it is over, and act on it next meeting when there would be a quorum. He noted all absent board members would have access to the recordings so they could hear the files and prepare for the May 12, 2021 meeting.

**R&J NORDWALL  
(FZC-21-01)  
6:07 PM**

A zone change request from R&J Nordwall Company, LLC for property in the Evergreen Zoning District. The proposal would change the zoning on property located at 121 Poplar Drive, Kalispell, MT from *R-2 (One Family Limited Residential)* to *B-2 (General Business)* on 0.64 acres.

**STAFF REPORT  
6:08 PM**

Erin Appert reviewed staff report FZC-21-01 for the board.

**BOARD  
QUESTIONS  
6:08 PM**

None

**APPLICANT  
PRESENTATION.  
6:08 PM**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicants. He stated the applicants owned the adjacent property to the north, which contained a business, and they wanted the ability to expand. They agreed with the findings in the staff report.

**BOARD  
QUESTIONS  
6:09 PM**

None

**AGENCY  
COMMENTS  
6:09 PM**

There were no public agencies present to comment. Written comments were reviewed in the staff report.

**PUBLIC  
COMMENT  
6:09 PM**

None

**BOARD  
QUESTIONS  
6:09 PM**

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-21-01)  
6:10 PM**

Stevens made a motion, seconded by Jackson, to adopt staff report FZC-21-01 as findings of fact.

**BOARD  
DISCUSSION  
6:10 PM**

None

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-21-01)  
6:10 PM**

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZC-21-01)  
6:11 PM**

Stevens made a motion, seconded by Jackson, to recommend approval of FZC-21-01 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
6:11 PM**

None

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-21-01)  
6:11 PM**

Motion passed unanimously on a roll call vote.

**GREGORY &  
MARAIIKA  
EATON  
(FZC-21-02)  
6:12 PM**

A zone change request from Gregory T. & Maraika M. Eaton, for property in the Haskill Basin Estates Zoning District. The proposal would change the zoning on property located at 555 Haskill Basin Road, Whitefish, MT from AG-20 (Agricultural) to SAG-10 (Suburban Agricultural) on approximately 25.99 acres.

**STAFF REPORT  
6:12 PM**

Donna Valade reviewed staff report FZC-21-02 for the board.

**BOARD  
QUESTIONS  
6:15 PM**

Larsen asked staff to address the concern of spot zoning. Valade reviewed the definition of spot zoning and discussed, in great detail, how it pertained to this particular property.

Nogal asked for an explanation of zoning districts and their purpose. Valade explained zoning districts and their purpose including that they were attempts to preserve the area, restrict what could be done, and address concerns of the area. She discussed this at length.

**APPLICANT  
PRESENTATION  
6:17 PM**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicants. He addressed the history of the property and discussed when zoning was put in place. He elaborated on what constituted spot zoning and explained the property did not allow a use substantially different from the current uses. They agreed with the staff report and were available for questions.

**BOARD  
QUESTIONS  
6:20 PM**

Nogal asked Mulcahy to address drainage concerns. Mulcahy explained that if the zone change were allowed to go through, any new lot would have to comply with DEQ and Environmental Health rules.

Larsen addressed the public comment which was concerned that a precedent would be set. He said the Haskill Basin Zoning District remained pretty much in tact as it was. He discussed the history behind the zone changes in that area. He reiterated that each zone change was to be judged on its own merit and did not necessarily mean there would be a domino effect [of zone changes].

**AGENCY  
COMMENTS  
6:23 PM**

There were no public agencies present to comment. Written comments were reviewed in the staff report.

**PUBLIC  
COMMENT  
6:24 PM**

Greg Eaton, 555 Haskill Basin Rd, was the applicant and explained his intent behind the zone change. He gave a history of the property and discussed when the 20 acre zoning was put into place. He then continued to list properties which were smaller than his and how they were split.

Ronald Bunner, 1019 Haskill Basin Rd., spoke in opposition of the application. He reviewed the two previous zone changes in the zoning district which had been denied. He believed that granting this zone change would leave them open to more zone changes in the future.

Gayle Basin, 975 Haskill Basin Rd. spoke in opposition of the application. She had the same concerns as discussed previously. She was concerned it would put the rest of the properties at risk and the damage development would bring.

Charles Sparrow spoke in opposition of the application. He was afraid of the domino effect of development that this could start in the area.

**APPLICANT  
REBUTTAL  
6:31 PM**

None

**STAFF  
REBUTTAL  
6:31 PM**

Valade stated she was aware of the previous zone changes and their denial. In her review, there were some differences between the previous properties. These differences included being located close to where Haskill Basin Road's pavement ended and the property's location on the farthest edge of the Whitefish County Water and Sewer District. The road was capable of handling the additional 10 ADT which would occur with one additional residence and in the future, being in the Water and Sewer District could potentially help with any water and septic issues.

**BOARD  
QUESTIONS  
6:31 PM**

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-21-02)  
6:31 PM**

Stevens made a motion, seconded by Jackson, to adopt staff report FZC-21-02 findings of fact.

**BOARD  
DISCUSSION  
6:32 PM**

Larsen felt that the finding of facts were favorable.

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-21-02)  
6:32 PM**

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZC-21-02)  
6:33 PM**

Stevens made a motion, seconded by Jackson, to recommend approval of FZC-21-02 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
6:33 PM**

Stevens addressed the concern over spot zoning and did not consider this spot zoning, the uses between SAG-10 and AG-20 were identical. He wondered how many people in opposition of the application actually had property that was less than the 20 acre minimum. He discussed people using the regulations to ensure that the "haves" remain the "haves" and the "have-nots" remain the "have-nots". He clarified he did not think this was case with this application because it was only 1 extra parcel but many times it was used in such a way. He was sensitive to it. He recalled the [previously referenced] zone changes were denied because the circumstances were different and the accesses were different. He also recalled the Planning Board had recommended a positive approval but the Commissioners denied it.

Larsen stated the Whitefish Fire Department did not comment on this proposal

as they had for the other proposals in the area. He reiterated zone changes were reviewed on a case by case basis. The fact the road was capable of handling the potential increase was one of the differences between this zone change and the previous zone change proposals. He too was going to vote for a positive recommendation.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-21-02)  
6:41 PM**

Motion passed unanimously on a roll call vote.

**TRUST  
(FZC-21-03)  
6:43 PM**

A zone change request from Breckenridge Surveying and Mapping, Inc. on behalf of Rea Trust, Judy Toggai and Bonnie Kenny Trust for property in the Rural Whitefish Zoning District. The proposal would change the zoning on four (4) parcels located on Conn Road, near Kalispell, MT from *SAG-10 (Suburban Agricultural)* to *R-2.5 (Rural Residential)* on approximately 35.94 acres.

**STAFF REPORT  
6:44 PM**

Laura Mooney reviewed staff report FZC-21-03 for the board.

**BOARD  
QUESTIONS  
6:46 PM**

None

**APPLICANT  
PRESENTATION  
6:46 PM**

Rick Breckenridge with Breckenridge Surveying, 2302 US Highway 2 E, represented the applicants. He discussed a discrepancy in which the property was divided by zoning but was actually 1 parcel. He discussed the intent behind the zone change and the logistics of the application in order to clean up the zoning on the property.

He discussed the southern part of the property, which was zoned SAG-10 and had been created as a buffer between agriculture and residential. Everything around it was unzoned. He continued to discuss the surrounding zoning in great detail.

He addressed the concerns written by Fish, Wildlife, and Parks and said his data collection did not show degradation of drinking water.

He also discussed, in great detail, the zoning created by Whitefish and the problem that the county had inherited with the removal of the Whitefish donut.

**BOARD  
QUESTIONS  
6:53 PM**

Stevens questioned how many parcels were in it. It was explained that, due to zoning, there was 1 whole parcel and 3 partial parcels. Stevens clarified they either had to change the zoning to 2.5 on one part of it or SAG-10 on the other part in order to fix it.

**AGENCY  
COMMENTS  
6:55 PM**

No agencies were present to give public comment. Written comments received were reviewed in the staff report.

**PUBLIC  
COMMENT  
6:57PM**

Charles Davis, 205 Barnes Ln, spoke in opposition of the application. He discussed the history of development on his property. He was concerned about changing the character of the area. He was concerned about periodic flooding in the area. He was concerned about what would happen to the property in the future. He requested that they change it to SAG-5, which would cut the impacts in ½.

Robin Bissel, 68 Irish Bend Ln, spoke in opposition of the application. She was concerned about health and safety. She was concerned about the traffic impact and felt there should be a traffic impact study done.

Casey Olson, 112 Olson Ct., spoke in opposition of the application. He discussed his history of living in the area. He was in favor of property rights but was concerned about the traffic safety of the one way road. He knew that, sooner or later, parcels would be sold but this opened a gateway for this to happen quicker. He felt the traffic situation should be addressed before the zone change.

Michael Grimes, 46 Deer Meadows Ln., spoke in opposition of the application. He was concerned about water drainage. He was also concerned about the increase of density with R-2.5.

Pete Krona, 61 Deer Meadows Ln., spoke in opposition of the application. He was concerned about flooding and said it was an issue for anyone in the area with a basement. He was also concerned about the traffic impact.

John Gangemi, 68 Irish Bend Ln., spoke in opposition of the application. He was concerned that there was a discretion between what the representatives had said it was zoned as and what was shown on the GIS mapping. He felt there should be a new application submitted reflecting the difference. He was also very concerned over the traffic impact on an unsafe intersection and the dust impact. He felt that all of these things should be considered in the staff report.

Phil Olson, 1781 Conn Rd., spoke in opposition of the application. He discussed the history of his property and issues that he had with water. He discussed the wildlife on his property and was concerned about the impact



more development would bring. He also reiterated the dangers of the road and that it was closed 4 months of the year because of the conditions.

Robert Rea, 1690 Conn Rd., spoke in support of the application. He discussed the history of the property. He said when his father in law bought the property, it was with the intention to build it out. The property stayed under till, and would remain so while he was the owner, but the property did not make a dime. He did not intend to build it out. He intended to clean up the zoning and even out the acreage amongst family. This was the only way they could do this. He was in agreement with the neighbors regarding the traffic concerns.

David Anglin, 280 Barnes Ln, spoke in opposition of the application. They lived there as part time residents. He agreed with the concerns that had been previously brought to the board's attention. He felt that Conn Rd, if built out, would become a severe place to navigate. He was concerned about traffic and the severity of the intersection. He was concerned there could be up to 35 lots built. He discussed the soils which could lead to flooding and was concerned about the flooding and drainage issues. He was also concerned about the lack of information regarding septic fields. He requested it be zoned as SAG-5.

Gordon Cross, 1600 Conn Rd., spoke in opposition of the application. He wanted the board to be aware that this was an agricultural area. He felt that R-2.5 was a poor choice of zoning classification as it would not be a buffer for high residential; there was no high residential in the area. He felt the steep slopes and sluffing should be taken into account.

**APPLICANT  
REBUTTAL  
7:24 PM**

Breckenridge said they did not create the problem, they inherited it. He discussed the zoning around them being R-2.5 or unzoned.

Breckenridge had a vast knowledge of the ground water out in that area and had done many studies. He reminded the board that this was a zone change and not DEQ review.

He addressed that Conn Rd. had been studied in May of 2020 and it showed it had not hit capacity.

He alluded that those in opposition to the application were either in R-2.5 or unzoned. He felt it was unfair for those who opposed to "want mine but I don't want anybody to get theirs" and felt there was a hint of that in the public comment tonight.

He reiterated this was a problem they had inherited by Whitefish when they established zoning and Flathead County, in turn, inherited it. He discussed this at length. They wanted to correct this before the problem was passed on



to someone else.

He acknowledged that it was a wildlife corridor but said that was the nature of the area that they lived in.

**STAFF  
REBUTTAL  
7:28 PM**

None

**BOARD  
QUESTIONS  
7:28 PM**

Stevens asked Breckenridge about the confusion regarding impervious surfaces and what happened to adjacent properties when there was a development. The Flathead Conservation District had addressed it. He confirmed with Breckenridge that they had to submit a storm water report to Montana DEQ, which would show how they were going to retain any excess runoff, that wasn't there before, from adjacent properties. Stevens wanted the public to hear this in order to address their concerns; development would require an engineer to create a plan for storm water runoff and it would have to be approved.

Jackson asked for clarification on the acreage of the parcels. Breckenridge clarified and discussed the history of zoning in that area.

Stevens said that having two zoning classifications on one property was problematic and needed to be avoided. The board had an obligation to rectify the issue of having two different zoning classification on one property.

**MOTION TO  
TABLE  
(FZC-21-03)  
7:36 PM**

Larsen motioned, seconded by Nogal, to table FZC-21-03, due to lack of quorum, until next month.

**BOARD  
DISCUSSION  
7: 37 PM**

None

**ROLL CALL TO  
TABLE  
(FZC-21-03)  
7:37 PM**

Motion passed unanimously on a roll call vote.

**KARYL STRUCK  
(FZC-21-04)  
7:43 PM**

A zone change request from Karyl Kim Struck for property in the Willow Glen Zoning District. The proposal would change the zoning on property located at 521 E Cottonwood Drive from R-1 (Suburban Residential) to R-5 (Two-Family Residential) on approximately 28.52 acres.

**STAFF REPORT  
7:43 PM**

Erik Mack reviewed staff report FZC-21-04 for the board.

**BOARD  
QUESTIONS  
7:46 PM**

None

**APPLICANT  
PRESENTATION  
7:46 PM**

Rick Breckenridge with Breckenridge Surveying, 2302 US Highway 2 E, represented the applicants. He discussed the history of zoning and the floodplain on the property.

Breckenridge said the property was for sale and explained that there had been a tragic fatality and some hostility from the neighbors which have caused them to want to sell the property. He continued to discuss the history of the property and the neighbors.

He described that there would be very little impact compared to what was already there and what were permissible uses. This was brought on because of the floodplain being on the property. R-5 was the best use with the intent of an RV park. He did not blame them for wanting to sell because of the delicate situation.

**BOARD  
QUESTIONS  
7:54 PM**

None

**AGENCY  
COMMENTS  
7:54 PM**

None

**PUBLIC  
COMMENT  
7:54 PM**

Valorie Galloway, 515 E. Cottonwood Dr., spoke in opposition of the application. She did not feel it was appropriate to discuss the easement issue. She said she had not approached the applicant, who had not lived there since her husband had died. She was concerned about traffic impact. She felt the proposal would only benefit the owner and it should remain farmland.

Roberta Struck, 540 E Cottonwood Dr., spoke in opposition of the application. She asked the zone change be postponed until there was a viable development plan. She was concerned about the impact it would have on their lives.

Greg Bonner, 1710 Hwy 35, spoke in opposition of the application. He was concerned over the negative impact the density would cause on the road and the possible safety issues that would be created with an RV park or mobile home park.

Kathleen Branson, 553 Swan Mountain Village, spoke in opposition of the application. She felt they needed the green space. She was concerned over the impact for safety as she lived near an RV park and there was a lot of crime. She had gotten to know the previous owner and learned that, as long as he was alive, he intended it to remain a farm. She felt it should be left as such in order to honor his legacy. She wanted to keep the neighborhood peaceful.

Shawn Purcell, 1220 Wildcat Dr., spoke in support of the application. He discussed the need for affordable housing in the valley and a mobile home park would create that. He said that the owner, who had passed away, would want his wife taken care of. This would be an income for his mother in law.

Kevin Turman 1830 Hwy 35, offered his condolences to Mrs. Struck. He spoke in opposition of the application. He was concerned that there were mobile home parks and RV parks in the near vicinity already. He was concerned about the “have nots” giving up what they already had, including safety and well-being. He discussed transients and crime that occurred on his church property. He was sympathetic to the poor but was concerned about the drugs and crime that occurred in their parking lot that came from the RV Park. He would prefer to see any rezoning be postponed until a new owner took hold and they could decide what to do with it.

Kristi Turman 1820 Hwy 35 spoke in opposition to the application. She said she would love for the applicant to be able to sell the property and be taken care of financially in that way. She discussed their experience with transients and crime on their property. She was concerned about the traffic impact.

Andy Struck, 540 E Cottonwood Dr., spoke in opposition of the application. He was the son of Darwin, who had passed away. He discussed the property being within the family. His dad had always wanted the land to be farmed and had no intention of changing it. In response to the representative saying that the applicant had lived on the property for 30 years, he said that was not true as they had only been together for 4 years. He discussed trying to communicate with his ex-step mom but had not heard what her intentions were until the property went on the market. He was also concerned about the traffic increase. He was concerned that there had been no development plan submitted. He was concerned about the environmental impact with the wetlands and floodplain being there. He was concerned about the impact RVs would make. He was also concerned over safety because there were homeless already living there. He was concerned about his family, who lived on the

adjacent property. He did not want to live next to an RV park. He felt that having it sold as farmland would be great, that was what the family had it as for the last 90 years.

Jennifer Struck-Rodriguez, 540 E Cottonwood Dr., spoke in opposition of the application. She was Darwin's daughter and was in agreement with what her brother had shared. This would not be Darwin's wish to see happen to the land. It would not have been the wish of her grandparents' or great grandparents' as well. She felt there were inconsistencies in the application; specifically that the applicant had not owned the land for 30 years. They were recently married. She felt that applying for an RV park but marketing it as a mobile home park was inconsistent. She was concerned about water damage that could occur to mobile homes in the area. She did not feel it was beneficial to anybody, except for the applicant, and needed to have a firm development plan. She did not feel the applicant's word was worth much. She asked that the board consider the property owners who had bought land in the area, and based on her dad's word, the land would remain untouched by a developer. She was concerned over the potential of decrease in property values by the impact of having this particular development. She was concerned about the wildlife, the traffic, and did not feel this was a good idea that would benefit anyone.

**APPLICANT  
REBUTTAL  
8:21 PM**

Breckenridge said the airing of family laundry made it a tough situation. He reiterated the facts; the applicant had been married to Darwin when he passed and she was the successor of the property. She had to make some hard decisions without him. He also reiterated that they could not submit a development plan without a zone change. Development would be reviewed in subdivision review.

He addressed the concern over the transients, crime, and drug use in the area and pointed out that it was not limited to RV parks and trailer parks. It was disingenuous to say that it was a breeding ground for crime.

He discussed that he wanted to have a development plan and after the zone change was approved, they could come up with one. An RV park was a permitted use in the floodplain. They were not here to destroy 90 years of legacy or wildlife. The applicant had asked what she could do to help her get through this process and this was his advice.

The testimony attested to why the applicant felt she needed to sell the property.

**STAFF  
REBUTTAL  
8:26 PM**

None

**BOARD  
QUESTIONS  
8:26 PM**

None

**MOTION TO  
TABLE  
(FZC-21-04)  
8:27 PM**

Larsen motioned, seconded by Nogal, to table FZC-21-04, due to lack of quorum, until next month.

**BOARD  
DISCUSSION  
8:27 PM**

None

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-21-04)  
8:27 PM**

Motion passed unanimously on a roll call vote.

**CEDAR POINTE  
TOWNHOMES,  
LLC  
(FZC-21-05)  
8:28 PM**

A zone change request from Cedar Pointe Townhomes, LLC for property in the Evergreen Zoning District. The proposal would change the zoning on property located at 426, 428 and 430 Maple Drive, Kalispell, MT from R-1 (Suburban Residential) to RA-1 (Residential Apartment) on approximately 1.37 acres

**STAFF REPORT  
8:28 PM**

Erin Appert reviewed staff report FZC-21-05 for the board.

**BOARD  
QUESTIONS  
8:28 PM**

None

**APPLICANT  
PRESENTATION  
8:30 PM**

Tamara Tanberg with APEC Engineering, 111 Legend Trail, represented the applicants. She summarized the application and the intent to build duplexes. She discussed the history of the site and the proposal of 8 new units (4 duplex structures). She said it was an ideal location for increased density. She reiterated it was medium density and discussed the established landscaping and what they were proposing. They were working on creating affordable housing that was not an eyesore.

**BOARD  
QUESTIONS  
8:34 PM**

Nogal asked Tanberg whether there were three dwellings on the property. Tanberg confirmed there were three dwellings which is why it had three addresses assigned to it.

**AGENCY  
COMMENTS  
8:35 PM**

None

**PUBLIC  
COMMENT  
8:35 PM**

Jackie Smith, 422 Maple Dr, spoke in opposition of the application. She was concerned about the significant increase of density which would impact traffic, dust, lighting, noise, etc. She was concerned about pedestrians not having access to sidewalks. She was concerned about people not keeping their animals on their leash. She was concerned that the residents would not care for the area as a homeowner would. She was concerned about the wildlife. She felt there were other residential areas that were for sale that would create the same opportunity to increase the affordable housing. She discussed her petition that she had turned in.

Charles Lapp, 3230 Columbia Falls Stage, was the applicant. He discussed the need for affordable housing. He was looking at rehabilitating the property, he had refurbished the doublewide, and was going to take the other structures down. He intended to better the area. He discussed the services that were already connected in great detail. He felt this was an option that they could try to allow multiple family units to create affordable housing.

Cinnamon Davis, 427 Maple Dr., spoke in opposition of the application. She discussed her history in the area. She discussed her apprehension of having the current zoning changed and was concerned over the precedence it would set for future development in the area. She was concerned over the lack of infrastructure in the neighborhood. They had struggled to get sidewalks in the area. She lived in the neighborhood and was concerned about getting out on Reserve. She was concerned about the increase of traffic. She was concerned about the impact of the wildlife.

**APPLICANT  
REBUTTAL  
8:52 PM**

Tanberg clarified the property was not divided into three lots, rather, it was one lot with several water and sewer hookups. Mountain View Drive and Maple Drive were relatively equal as both were local roads and neither contained sidewalks.

**STAFF  
REBUTTAL  
8:54 PM**

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-21-05)  
8:57 PM**

Nogal made a motion, seconded by Jackson, to adopt staff report FZC-21-05 as findings of fact.

**BOARD  
DISCUSSION  
8:54 PM**

Breckinridge asked Tanberg whether the proposed access road would be paved and whether lighting was proposed. Tanberg responded the road would be paved. Lapp responded the exact plans cannot be finalized until the zoning was amended.

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-21-05)  
8:57 PM**

Motion passed unanimously on a roll call vote

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZC-21-05)  
8:58 PM**

Breckenridge made a motion, seconded by Nogal, to recommend approval of FZC-21-05 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
8:58 PM**

Stevens stated that one of his main concerns was affordable housing. Anything he could do to not unavoidably restrict the provision of affordable housing, he was going to support. It used to be that affordable housing was owner occupied but now it was owner occupied and rented (including accessory dwellings). He was going to support the proposal based on the need for affordable housing as long as there weren't any health or safety issues.

Breckenridge stated the property had been used for multi-family in the past and it appeared some of the surrounding properties had as well. He had a hard time saying no to a zoning designation that matched the existing use of a property.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-21-05)  
9:01 pm**

Motion passed unanimously on a roll call vote.

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**GEFFERY  
SUBDIVISION  
(FPP-21-01)  
9:02 PM**

A request from Robert Mackendtadt with technical assistance from Sands Surveying, Inc. for preliminary plat approval of Geffery Subdivision, a proposal to create six (6) residential lots on 12.005 acres. The property is located at 71 Creston Trail, Kalispell, MT and is zoned Scenic Corridor.

**STAFF REPORT  
9:02 PM**

Erin Appert reviewed staff report FPP-21-01 for the board.

**BOARD  
QUESTIONS  
9:05 PM**

None



**APPLICANT  
PRESENTATION**  
*9:05 PM*

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicant. He provided an overview of the proposal. The property was located near several businesses and the fire station in Creston. Blaine Creek ran along the northeast corner of the subdivision and a 'No Build Zone' was included on the preliminary plat to mitigate impacts to the floodplain and riparian area. They were not opposed to providing access to the adjoining property. He discussed the proposal with the fire district and they were open to cash-in-lieu of the requested water tender recharge facility.

**BOARD  
QUESTIONS**  
*9:07 PM*

None

**AGENCY  
COMMENTS**  
*9:07 PM*

There were no public agencies present to comment. Written comments received were reviewed during the staff report presentation.

**PUBLIC  
COMMENT**  
*9:07 PM*

None

**BOARD  
QUESTIONS**  
*9:08 PM*

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FPP-21-01)**  
*9:08 PM*

Stevens made a motion, seconded by Jackson, to adopt staff report FPP-21-01 as findings of fact.

**BOARD  
DISCUSSION**  
*9:08 PM*

None

**ROLL CALL TO  
ADOPT F.O.F.  
(FPP-21-01)**  
*9:08 PM*

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FPP-21-01)**  
*9:09 PM*

Stevens made a motion, seconded by Jackson, to recommend approval of FPP-21-01 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
9:09 PM**

Stevens referenced the Flathead Conservation District's comment and stated a storm water management plan would be required by DEQ. Board discussion ensued regarding the District's process for submitting comments.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FPP-21-01)  
9:12 PM**

Motion passed unanimously on a roll call vote.

**G&M TRUST  
(FLP-20-95)  
9:14 PM**

A request from G&M Trust for a lakeshore construction permit to install a floating dock, floating boat lift, stairway, and swim platform within the lakeshore protection zone (LPZ) of Lake Five. The Flathead County Board of Commissioners has determined the proposed project may have a significant impact on the lake, lakebed, or lakeshore, requiring a recommendation from the Flathead County Planning Board prior to review, per Section 3.3(B) of the Flathead County Lake and Lakeshore Protection Regulations (FCLR). The property is located at 1453 Grizzly Spur, West Glacier, MT and contains approximately 11.5 acres.

**STAFF REPORT  
9:15 PM**

Erin Appert reviewed staff report FLP-20-95 for the board.

**BOARD  
QUESTIONS  
9:17 PM**

Nogal asked if these activities were already existing on the property. Staff replied that they were not. There was a previous violation on the adjacent property. There was not anything currently on the property.

Larsen asked if the swim platform conformed to regulations. They discussed regulations with docks, and that there were no specific regulations for swim docks, but it would be up to the board to decide.

**APPLICANT  
PRESENTATION  
9:20 PM**

Suzie Dietz, 1453 Grizzly Spur, was the applicant. She said there had been a lot of confusion because the dock that the neighbors objected to was on an adjoining lot. She thought moving it to this location would make the neighbors happy. She did not have strong opinions about the swim platforms. It could move closer to shore if need be. It was in a sort of cove and would be out of boat traffic. She was open to putting it in a different location but this seemed best.

**BOARD  
QUESTIONS  
9:22 PM**

None

**AGENCY  
COMMENTS  
9:23 PM**

There were no public agencies present to comment. Written comments received were reviewed during the staff report presentation.

**PUBLIC  
COMMENT  
9:24 PM**

Mike Kopitzke, 1460 Grizzly Spur, spoke in opposition of the application. He stated his property was adjacent to the subject property. There had been a great deal of confusion regarding docks and the whole proposal. The Board previously considered a major land use proposal for the Whistle Stop Retreat. There was current litigation pending on that application and the court granted a preliminary injunction on this whole application process. He stated they should maintain the status quo. He spoke about the relationship between the major land use permit and docks. He stated they should not be taking action on this because the County Commissioners have rescinded the major land use permit and were in the process of litigation. Permits for docks had been granted administratively and then revoked. A major land use permit had been granted, litigation commenced, and the County Commissioners rescinded it. He spoke in detail regarding the injunction. He stated the applicant had a history of starting development without the proper permits and discussed Certificate of Subdivision Approval and placement of docks. He distributed a document from the major land use permit application and discussed structures on subject property and adjacent property. He stated you cannot water ski from the proposed dock due to the angle and it did not make sense to have a dock there because there was an existing dock and boat house on the adjacent property. He expressed concerns regarding the project being constructed properly and lack of County enforcement. He stated it is a commercial development and the proposal is not the same as a residential dock. There is no reason to have a dock in this location because there are no structures on the property. He proposed the following conditions of approval: 1) The major land use permit must first be applied for and granted; 2) A licensed engineer must monitor the construction and sign off on the work to ensure it meets the terms of the permit, and; 3) The applicant must restore the lakeshore that has been damaged.

Lee Pinski, 121 Palmer Drive, spoke in opposition of the application. He was a resident of Flathead County and has been involved in this issue and the legal case for the last several years. He distributed photos and discussed history of the property including a lakeshore violation and a revoked after-the-fact lakeshore construction permit. He spoke about the major land use permit application. He questioned the purpose of the proposed project since no structures requiring water or sewer were allowed on the property. He spoke about the agricultural tax designation of the property and change of use. He discussed the preliminary injunction. He distributed letters from the Flathead County Planning and Zoning Office and the Flathead County Board of Commissioners and discussed the differences between 'rescinded' and 'revoked'. He discussed the road easements on the property and concluded the findings of fact, within the staff report, were lacking and the Board should

wait until a new application for a major land use permit is submitted, processed, and approved based on the letter from the Commissioners.

**APPLICANT  
REBUTTAL  
9:59 PM**

Dietz said she was available for questions and reiterated that most of what was said tonight was opinion.

Stevens asked Dietz how many acres she had between the two parcels and she answered 23 acres.

**STAFF  
REBUTTAL  
9:59 PM**

**MAIN MOTION  
TO ADOPT F.O.F.  
(FLP-20-95)  
10:03 PM**

Stevens made a motion, seconded by Breckenridge, to adopt staff report FLP-20-95 as findings of fact.

**BOARD  
DISCUSSION  
10:03 PM**

Stevens stated that one of the members of the public had privileges no one else had as far as time was concerned. Board members were not attorneys and could not make determinations on legal matters. They relied on the planning staff and attorneys. The issue was whether the subject property had the legal right to install a dock. There was significantly less impervious cover than the maximum allowed and the project complied with design standards. He could not make a decision on the other issues. The staff report addressed what he needed to know and the property did not need a major land use permit to have a dock.

Larsen asked staff about Finding of Fact #2 and whether the swim platform complied with the criteria. Mussman responded there were several ways to consider this. Typically docks cannot exceed 60 feet in length from the high water mark lakeward, but there were some situations where the regulations could regulate within 100 feet from the lakeshore. The Board could condition the swim platform to be located between 60 to 100 feet from the lakeshore. There was already a condition prohibiting using the swim platform for the mooring of boats so it was not a dock. However, it was proposed to be 10 feet by 10 feet and the maximum width for structures over the water was 8 feet, so the dimensions could be amended through a condition. Larsen asked whether it could be conditioned to be no farther than 60 feet, to which Mussman replied yes, however the regulations did allow for the regulation up to 100 feet. Board discussion ensued regarding the distance from the lakeshore. Stevens agreed it could be conditioned to be 60 feet from the lakeshore and a maximum of 8 feet in width.

Larsen stated he agreed with Stevens' previous comments regarding the major land use permit not being relevant to the proposal and added there was no

requirement for a property to be developed in order to have a dock.

Nogal asked whether Finding of Fact #2 needed to be amended. Larsen stated the issues could be addressed by amending the conditions of approval.

**ROLL CALL TO  
ADOPT F.O.F.  
(FLP-20-95)  
10:11 PM**

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FLP-20-95)  
10:12 PM**

Stevens made a motion, seconded by Jackson, to recommend approval of FLP-20-95 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
10:12 PM**

Stevens reiterated the request was for a lakeshore construction permit for a floating dock. The staff report indicated the proposal would result in significantly less impervious cover than allowed and the project complied with design standards. The Board discussed conditions for the swim platform since there are no specific design standards for the swim platform. The applicant stated she did not mind such a condition. Stevens stated the public comment regarding the Department of Revenue's agricultural land classification was irrelevant to the land use regulations and the actual use of the land. He thought this property had the right to have a dock if it complied with the Flathead County regulations and he was told that it did.

Nogal asked staff whether there was currently a dock on the property or the adjacent property. Mussman responded most of the docks in the County were floating docks and that there had been several docks on the adjacent property that were owned by the same property owner. Floating docks were removed during the winter. Using Google Earth, staff did not identify any docks on the subject property in the past. Nogal asked whether there was a permit for the docks on the adjacent property, to which Mussman responded yes. Nogal asked whether they were after-the-fact. Mussman stated it was difficult to determine whether or not they were after-the-fact when they were floating docks because there could have been some summers where the docks were not placed. If there was a dock or several docks prior to the adoption of the regulations, they would be considered legally non-conforming. There has never been a dock on the subject property in the historical Google Earth photos which date back to 1991.

Larsen asked whether the subject property was looked at by itself and whether there was criteria for how much you could have. Mussman stated only one dock was permitted, per tract, regardless of the amount of lakeshore frontage.

Nogal asked Mussman whether there could be a floating dock on each tract, to which Mussman confirmed each tract could have a floating dock, with a permit. Board discussion ensued regarding the history of the property and previous lakeshore construction permits. Mussman concluded there were docks in the water without permits, not on this particular property, after-the-fact permits were issued and revoked, and the current application was not after-the-fact.

Breckenridge referenced a dock photo that was received during the public hearing and stated it appears to be approximately 150 feet from the subject property, based on GIS. There was no indication in the photo as to where the property boundary was.

Jackson stated he was aware of a dock that was permitted by the Flathead Conservation District to be 100 feet because the water was shallow, but typically they only permitted 60 feet. He agreed that it otherwise appeared to meet the standards and they could condition it.

**MOTION TO ADD  
CONDITION #32  
10:24 PM**

Larsen motioned, seconded by Jackson, to add Condition #32 to state:

*The swim platform shall be located no farther than 60 feet from the average high water mark.*

**BOARD  
DISCUSSION  
10:24 PM**

None

**ROLL CALL TO  
ADD CONDITION  
#32  
10:24 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
10:25 PM**

The board discussed whether they needed to make a motion to limit the size of the platform. Stevens stated swim platforms did not have a size limit and he did not have an issue with it. If it were moved back to 60 feet, it would not be a navigation hazard. Larsen asked staff whether they need to limit the size of it. Mussman stated the 8 feet width maximum applied to docks and there were no width standards for swim platforms. Board discussion ensued regarding whether to add a condition. Breckenridge stated, since there were no regulations for swim platforms but there are regulations for dock widths, it seemed appropriate to carry those over.



**MOTION TO ADD  
CONDITION #33  
10:28 PM**

Breckenridge motioned, seconded by Nogal, to add Condition #33 to state:  
*The dimensions of the swim platform shall be limited to 8 feet in length  
by 8 feet in width.*

**BOARD  
DISCUSSION  
10:28 PM**

None

**ROLL CALL TO  
ADD CONDITION  
#33  
10:28 PM**

Motion passed unanimously on a roll call vote.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
10:28 PM**

Motion passed on a 4-1 roll call vote. Stevens dissented.

**OLD BUSINESS  
10:29 PM**

None

**NEW BUSINESS  
10:29 PM**

Mussman discussed code compliance protocol and procedures of Flathead  
County Planning and Zoning.

**ADJOURNMENT  
10:29 PM**

The meeting was adjourned on a motion by Larsen and Jackson at  
approximately 10:29 p.m. The next meeting will be held May 12, 2021.

  
\_\_\_\_\_  
Jeff Larsen, Chairman

  
\_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 5 / 12 /21